*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+WRIT PETITION NO. 1056 OF 2001

%26-07-2006

#K.TAHEER MAHI

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PETITIONERS

Vs.

THE G.M. DEPARTMENT OF TELECOMMUNICATIONS
AND ANOTHER …
RESPONDENTS.

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>HEAD NOTE:

! COUNSEL FOR PETITIONERS: MR.D.KRISHNA MURTHY.
^COUNSEL FOR RESPONDENTS:MR.B.VENKATA RATNAM.

?CASES REFERRED:

1. 1996 (3) ALT 749 (D.B.)
2. AIR 1993 A.P. 131
3. 1995 (2) ALT 170

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.NO. 1056 OF 2001
Dated:26-07-2006

Between:
K.Taheer Mahi **Petitioner**

And

The General Manager (South)
Department of Telecommuncations and another
Respondents

THE HONOURALE SRI JUSTICE P.S.NARAYANA

W.P.NO. 1056 OF 2001

ORDER:

1. Heard Sri Srinivas Rao, representing Sri M.V.S.Suresh Kumar, the counsel for the petitioner and Sri Krishna Murthy, the learned counsel for the respondents.

2. The writ petition is filed for a writ of Mandamus declaring the action of the respondents in disconnecting Telephone Nos. 7631326 and 7640395 registered in the name of the petitioner as illegal, arbitrary and unjust, and pass such other suitable orders.

3. This court issued Rule Nisi on 29-01-2001 and also passed orders in W.P.M.P.No.1264 of 2001 granting interim direction on condition that the petitioner deposits half of the amount demanded through demand notice dated 12-12-2000. It is stated that the interim direction was complied with.

4. Sri Srinivas Rao, the learned counsel for the writ petitioner had taken this court through the averments made in the affidavit filed in support of the writ petition and would submit that the disconnection

effected is not in accordance with law. Even otherwise, the learned counsel would contend that inasmuch as the interim direction with a condition, in fact, had been complied with, the petitioner may be permitted to pay the rest of the amount taking into consideration several facts which had been explained in detail in the affidavit filed in support of the writ petition.

5. Per contra, Sri Krishna Murthy, the learned counsel representing respondents would submit that two notices were issued by registered post and they were returned. The learned counsel also would submit that Rule 443 of the Indian Telegraph Rules is applicable to the facts and circumstances of the case. The counsel also placed strong reliance on **Assistant General Manager (OSD), Telecom District, Vijayawada Vs. Mahalakshmi Legal and Tax Consultancy Services, Vijayawada,**[1] **.**

6. Heard both the counsel.

7. In the present writ petition, the writ petitioner is questioning the action of the respondents in disconnecting the personal telephones of the petitioner bearing Nos.7631326 and 7640395 on the ground that they are in arrears of telephone charges in respect of the telephone connection in the name of the company. It is stated that the petitioner is the Managing Director of M/s. Eminent Publications Private Limited, a company registered under Companies Act, having its registered office at Jyothinagar, Lower Tankbund, Hyderabad. It is stated that the company was running daily news paper by name “A.P.Times” and the company obtained a telephone connection bearing No.3322122. It is further stated that the company had made payments of telephone charges upto September,1996 and thereafter due to losses incurred on account of non-clearance of bills by the debtors, the company could not make payment of telephone charges. It is further stated that due to

financial losses, the company stopped the publication of news paper and ultimately the company was wound up in the month of May,1998. Several other factual details had also been narrated and it was stated that the respondents issued demand notice on 12-12-2000 demanding the company to pay Rs.14,232/- towards arrears due in respect of telephone No.3322122 which was in the name of the company. It is stated that on the receipt of the notice , the petitioner orally informed the respondents about the inability of the company to pay the dues and also informed that the company had already initiated legal action against the debtors for recovery of amounts and that dues would be cleared on receipt of amounts from its debtors. It is also stated that respondents herein without issuing any notice or opportunity to the petitioner , disconnected his personal telephone connection bearing Nos. 7631326, 7640395 about one week back. The said action is being questioned as illegal, arbitrary and contrary to the principles of natural justice.

8. In the counter filed, the allegations are denied. It is also stated that the registered notice sent to the petitioner itself returned back with remarks " Not known". Specific stand was taken that this case would fall within the four corners of Rule 443 of Indian Telegraph Rules. After narrating further details, it was prayed that the petition be dismissed with a direction to the petitioner to pay the balance of dues.

9. In **Y. Pridhvi Kumar Vs,. The General Manager, Telecom District, Hyderabad,** [2] while dealing with Section 7 of the Telegraph Act (13 of 1985) and Rule 443 of the Telegraphic Rules, 1951, the learned judge of this court held that the disconnection of phone for default and mother and son having two different telephones and independent subscribers and mother defaulting in payment, no liability could be fastened on son. Disconnection of telephone of son would be arbitrary and unreasonable and a clear infraction of

fundamental rights under Article 14 of the Constitution of India.

10. In **M/s.Mahalakshmi Legal and Tax Consultancy Services, Vijayawada, rep. by its Consultant Mr.B.Satyanarayana Vs. The Assistant General Manager, (OSD),Telecom Vijayawada and another,** [3] held that Rule 443 of the Indian Telegraph Rules only empowers to disconnect a person's telephone if his other telephone falls in arrears. The rule does not empower to disconnect the telephone of one person for the default of another person regardless of relation of the said two persons. In fact, the decision in **Y. Pridhvi Kumar Vs. The General Manager, Telecom District, Hyderabad (supra 2)** was followed in the said decision. Reliance was placed on the decision of the Division Bench of this court in **Assistant General Manager, (OSD), Telecom District, Vijayawada Vs. Mahalakshmi Legal and Tax Consultancy Services, Vijayawada, (supra 1),** wherein it was held that the applicant in the instant case, of the first telephone which was installed in the premises, is Mr. M.V.K.Murthy himself in the capacity of Managing Partner of M/s.Mahalakshmi Legal and Tax Consultancy Services. The application for the second telephone is Mrs.Mahalakshmi, his wife. She is not shown to be a partner of the firm- M/s.Mahalakshmi Legal and Tax Consultancy Services . Her son, however, is named as a partner of the firm. If the smoke screen of the existence of the firm M/s.Mahalakshmi Legal and Tax Consultancy Services, is removed, one can see clearly the presence of Mr.M.V.K.Murthy as the applicant for a telephone connection and the telephone is handled by him as it is installed in the premises in his occupation. The other telephone in the same premises is installed in the name of his wife, Mahalakshmi. When cloak is removed the real relationship of the owner of the first telephone connection (Mr. M.V.K.Murthy) and the owner of the second telephone connection (Mrs. Mahalakshmi) is revealed and they are none else

than the husband and wife. In the instance Rule 443 of the Indian Telegraph Rules is attracted and the appellant has committed no error in invoking the same.

11. In fact, the judgment dated 19-4-1995 in writ petition No. 3886 of 1995 reported in **M/s.Mahalakshmi Legal and Tax Consultancy Services, Vijayawada, rep. by its Consultant Mr.B.Satyanarayana Vs. The Assistant General Manager, (OSD),Telecom Vijayawada and another (supra 3)** was set-aside. Hence, it is needless to say that the decision of the Division Bench in **Assistant General Manager (OSD), Telecom District, Vijayawada Vs. Mahalakshmi Legal and Tax Consultancy Services, Vijayawada**(Supra 1) is binding on this court.

12. In the light of the same, it cannot be said that the demand made by the respondents is not in accordance with Rule 443 referred to supra. However, in the light of the interim direction made and the conditional order having been complied with, it would be just and proper to give the petitioner some more time to deposit the rest of the amount covered by the demand notice dated 12-12-2000. In the light of the same, the petitioner is hereby granted four more weeks time to pay or deposit the rest of the amount demanded through demand notice dated 12-12-2000.

13. With the above direction, the writ petition is disposed of. No order as to costs.

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26-07-2006

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[1] **1996 (3) ALT 749 (D.B.)**

[2] AIR 1993 AP.131

[3] 1995 (2) ALT 170